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ARIZONA ATTORNEY GENERAL

June 16, 1953
Opinion No. 53-116

TO: Mr. William P. Mahoney, Jr.
County Attorney
Maricopa County Court House
Phoenix, Arizona

RE: School training of deaf and
partially deaf children.

QUESTION: Are the children who are eligible
for admittance to the Arizona
School for Deaf and Blind, because
of partial or total deafness, also
eligible for the homebound teach-
ing program? /Re.

The present Arizona School for Deaf and Blind was authorized
by Article 15 of Chapter 54 of the Arizona Code Annotated, 1939.
This chapter includes Sections 54-1501 to 54-1530, A.C.A. 1939.
The present Act, as encluded, was passed by the Legislature of 1929, Chap-
ter 93. The pertinent sections dealing with the partially deaf
and deaf are as follows:

"54-1505. Deaf persons entitled to education.—All the deaf residents of the state,
and those deaf to such an extent, and those
whose speech is so defective that they can
not acquire an education in the common
schools of the state, between the ages of
six and twenty-one, of suitable capacity
and of good moral character, shall be en-
titled to an education in the institution
without charge."

"54-1520. Persons required to attend school.—
All persons from six to eighteen years of
age inclusive, whose parents or guardians
are residents of this state, and who by rea-
son of partial or total blindness or deafness
are unable to obtain an education in the pub-
lic schools of this state, shall under the
provisions of this act be required to attend
the Arizona State School for the Deaf and the
Blind, unless such persons are being privately
educated, or unless they are not subjects for
admission to the deaf and blind institute of

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the state of Arizona."

From the provisions of Section 54-1520 we have the legislature stating that it is mandatory that those who are eligible to attend the Arizona State School for Deaf and Blind shall be required to attend, unless such persons are being privately educated.

In 1951 Section 54-812, A.C.A. 1939, as amended, provided, in part, as follows:

"54-812. Homebound teaching program. --
(a) The state board of education shall provide a uniform course of instruction for educable homebound students. * * *
(b) For the purposes of this act (SS 54-812, 54-813), homebound student means an educable common or high school student unable to attend regular classes due to illness, disease, accident or physical handicap, who has been examined by a private practicing physician, other than his own family doctor, and by the county superintendent of public health or the county physician, and declared by both to be unable to attend regular classes for a period of not less than a school year." *3 mo. the
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Thus, we have a specific statute passed in 1929 stating that those children afflicted with a handicap of partial or total deafness shall attend the State School for Deaf and Blind. In 1951 we have a general statute providing for a homebound teaching program for a child who is physically handicapped and cannot attend regular classes. The legislature used slightly different wording in these two statutes. In Section 54-1520, the phrase "unable to obtain an education in public schools of the state" and in Section 54-812, the phrase "unable to attend regular classes". However, even though the wording is slightly different, we believe the phrases to be synonymous. By attending regular classes would mean to attend regular classes in the public schools of the state. If a contrary construction were placed on the statute it could nullify the entire Article 15 of Chapter 54, dealing with the School for Deaf and Blind, as all the children could come under the category of physically handicapped and could be taught under the homebound program. We could find no intention by the legislature that Article 15 of Chapter 54 is expressly or impliedly repealed. Courts should give the statutes sensible construction such as will accomplish legislative intent and if possible should avoid absurd conclusions and avoid making statute void. MAHONEY v. MARICOPA

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COUNTY, (1937) 49 Ariz. 479, 68 P. 2d 694; FRYE v. SOUTH PHOENIX VOLUNTEER FIRE CO., (1950) 71 Ariz. 163, 224 P. 2d 651; SLATE v. AIRRESEARCH MFG. CO., (1949) 68 Ariz. 342, 206 P. 2d 562.

The further question arises, since we then have a specific statute passed in 1949, and a general statute passed in 1951, which shall control.

In the case of HUDSON v. BROOKS, (1945) 62 Ariz. 505, 158 P. 2d 661, our Supreme Court stated, 1. e. 513:

" * * * The rule of construction, however, is that a general act will not be held to repeal a special act unless the purpose and intent of the repealing act is manifest. Industrial Commission v. Arizona State Highway Comm., 40 Ariz. 163, 10 Pac. (2d) 1046; Favour v. Prohmiller, 44 Ariz. 286, 36 Pac. (2d) 570. Rowland v. McBride, 35 Ariz. 511, 520, 281 Pac. 207, 210, from which we quote:

'The rule is that a later act, general in its terms, will not be construed as repealing a prior act treating in a special way something within the purview of the general act. In other words, a special or particular statute is not repealed by a general statute, unless the intent to repeal is manifest. Henry v. United States, 8 Cir., 204 Fed. 896; Goaire v. Chambers, 28 Cal. App. 584, 153 Pac. 410; Reed Orchard Co. v. Superior Court, 19 Cal. App. 648, 126 Pac. 9, 18; State v. Peter, 101 Minn. 462, 112 N. W. 866; Folk v. City of St. Louis, 250 Mo. 116, 157 S. W. 71." (Underscoring indicates italics)

See also IN RE GILBERT'S ESTATE, (1952) 73 Ariz. 261, 240 P. 2d 534.

As stated before, we could find no intention of the legislature, either impliedly or expressly, repealing Article 15 of Chapter 54. Therefore, it is our opinion that any child who is eligible to attend the State School for Deaf and Blind, and is not being taught privately, must attend the State School for Deaf and Blind.

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